

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE NORTH CAROLINA
STATE BOARD OF ELECTIONS AND
ETHICS ENFORCEMENT

IN THE MATTER OF:
Investigation of election irregularities
affecting counties within the 9th
Congressional District

**EMERGENCY PETITION TO
CERTIFY ELECTION**

**BY: MARK HARRIS FOR
CONGRESS COMMITTEE**

NOW COMES Mark Harris for Congress Committee ("Harris Committee" or "Petitioner") and petitions the State Board of Elections and Ethics Enforcement ("State Board") to issue an emergency order prior to noon today certifying the election of Dr. Mark E. Harris ("Dr. Harris") to represent the Ninth Congressional District of North Carolina ("9th District") in the United State House of Representatives pursuant to the results of the 2018 General Election.

In support of its Motion, the Harris Committee shows the State Board as follows:

1. The 2018 Election was held on November 6, 2018. After the respective county canvasses in the eight counties comprising the 9th District, the certified vote totals showed that Dr. Harris (Republican) received 139,246 votes, Dan McCready (Democrat) received 138,341 votes, and Jeff Scott (Libertarian) received 5,130 votes. Dr. Harris's victory margin over Mr. McCready was Nine Hundred Five (905) votes.

2. No election protest pursuant to N.C. Gen. Stat. § 163A-1177 was filed regarding the 9th District election and no recount of the 9th District election results was requested by Mr. McCready, who conceded the election to Dr. Harris.

3. The certificate of election “shall be issued by the State Board six days after the completion of the canvass pursuant to G.S. § 163A-1172, unless there is an election protest pending.” N.C. Gen. Stat. § 163A-1184(b). No protest of the 9th District election was filed by “any registered voter who was eligible to vote in the election or by any person who was a candidate for nomination or election in the election”. N.C. Gen. Stat. § 163A-1177(a). Accordingly, the State Board should have certified Dr. Harris as the winner of the 9th District election on December 3, 2018.

4. At its meetings on November 27, 2018 and on November 30, 2018, the State Board refused to certify the election of Dr. Harris and the election of candidates for Bladen County Commissioner District 3 and Bladen County Soil and Water Conservation District Supervisor pending an evidentiary hearing to be held on or before December 21, 2018 to investigate alleged irregularities primarily involving absentee ballots in Bladen County.

5. On December 17, 2018, the State Board issued an Order of Proceedings delaying the date of the proposed evidentiary hearing to January 11, 2019.

6. Previously, on October 16, 2018, a Three Judge Panel of the Superior Court in Wake County ("Three Judge Panel") had declared the composition of the State Board unconstitutional but stayed its order until the State Board certified the results of the 2018 General Election ("October Order"). Thereafter, the Three Judge Panel extended the stay of its October Order four times to allow the State Board to complete its work with regard to the 2018 General Election, with the last such stay

extending to 12:00 Noon on Friday, December 28, 2018, two weeks *before* the January 11, 2019 hearing scheduled by the State Board.

7. On December 27, 2018, the Three Judge Panel issued an order declining to extend the stay of its October Order further due to the State Board's failure to meet its self-imposed timetables previously set for an evidentiary hearing. Thus the State Board's authority ends at noon today.

8. Since the State Board began its investigation, no evidence has been presented to justify the "well-settled" North Carolina rule that, "An election or referendum result will not be disturbed for irregularities absent a showing that the irregularities are sufficient to alter the result." Appeal of Ramsey, 120 N.C. App. 521, 525, 463 S.E.2d 254, 256 (1994), citing, inter alia, In re Clay County General Election, 45 N.C.App. 556, 570, 264 S.E.2d 338, 346, disc. review denied, 299 N.C. 736, 267 S.E.2d 672(1980).

9. Since failing to certify Dr. Harris' election, the State Board has failed to specifically outline any facts to support its decision not to certify the election results in the 9th District other than its references to "irregularities".

10. The Harris Committee encourages all proper investigation of election irregularities but it is not aware of irregularities or other concerns sufficient in number to change the outcome of the election in the 9th District.

11. Failure to certify the election results in the 9th District immediately will result in the citizens of the 9th District lacking representation in the 116th Congress when it convenes on January 3, 2019 and possibly weeks thereafter.

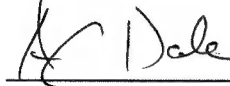

12. The State Board's investigation regarding absentee ballots in Bladen County or other issues related to the 9th District may be continued by the State elections board to be established on or before January 31, 2019 pursuant to Session Law 2018-146, which was enacted into law by the General Assembly yesterday.

13. The rule of law and existing precedent requires the State Board to certify the 9th District election. The constitutional guarantees of equal protection under the law require the State Board to certify the 9th District election. The State Board's prior practice in dealing with concerns in 2016 of deferring to the rights of the voters and counting votes to certify any election—especially in light of the State Board's inaction between the 2016 and 2018 elections to guard against absentee ballot problems in certain counties—requires the State Board to certify the 9th District election. The expectation of impartial, nonpartisan decision-making by the State Board requires the State Board to certify the 9th District election. Most importantly, the will of the voters in the 9th Congressional District requires this Board to certify this election.

14. The citizens of the 9th District have an expectation to be represented when Congress convenes on January 3, 2019. The State Board should not deprive the citizens of the 9th District of their right to representation. On behalf of the voters of the 9th District who are being disenfranchised by the Board's inaction, the Committee petitions and demands the Board to certify the 9th District election immediately.

WHEREFORE, for the foregoing reasons, the Mark Harris for Congress Committee respectfully requests that the State Board immediately issue an order prior to noon today which certifies that Dr. Harris was duly elected in the 2018 General Election to represent the citizens of the 9th District in the U.S. House of Representatives

This the 28th day of December, 2018.

By:   #48385

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the attached **EMERGENCY PETITION TO CERTIFY ELECTION BY: MARK HARRIS FOR CONGRESS COMMITTEE** to the following by delivering the same by email to legal@ncsbe.gov for posting to the online portal at <https://goo.gl/GjxKh5>, as referenced in Paragraphs 1 and 6 of the State Board's Order of Proceedings dated December 17, 2018.

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This the 28th day of December, 2018.

By: AC Dale by [Signature]
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